THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.12641 of 2007

Date 19-6-2007

Between:
The Commissioner of Commercial Taxes,
Govt. of A.P., Hyderabad and others.

.....

PETITIONERS
AND

G. Krishna Rao

.....RESPONDENT

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.12641 of 2007

ORDER: (per Smt. T.Meena Kumari,J)

The Department filed the present writ petition seeking a Writ of Certiorari to call for the records relating to and connected with the orders dated 19.10.2006 in O.A. No.1352 of 2005 and VMA No. 166 of 2005, on the file of the A.P. Administrative Tribunal, Hyderabad and to quash the same.

The respondent herein was initially appointed as a Section Officer in the Secretariat. Thereafter, on 1.11.1995, he was appointed on transfer as Commercial Tax Officer. While so, the Commissioner herein issued a charge memo on 20.9.2003 to the respondent alleging that the performance of the respondent was poor during the period from 1.4.2003 to 31.8.2003, amounting to violation of Rule 3 of A.P.C.S. (Conduct) Rules. Subsequently, on 9.10.2003, the respondent submitted his explanation denying the allegations levelled against him in the said memo. The Commissioner after considering the explanation submitted by the respondent, by order dated 4.3.2005, imposed the punishment of stoppage of one annual grade increment without cumulative effect. Aggrieved by the same, the respondent filed O.A. No. 1352 of 2005 before the Tribunal. The

Tribunal, by the order impugned in this writ petition allowed the said O.A. setting aside the order dated 4.3.2005 passed by the Commissioner. Aggrieved, the Department filed the present writ petition.

The Department filed a counter before the Tribunal wherein it is stated that the Government is particular that the performance of every functionary in the department should be appraised every month, and for this purpose, performance indicators have been designed and renewed every month. Further the performance appraisal of each functionary from April to August, 2004 have been called for from the Deputy Commissioners (CT) concerned and basing on the poor performance of revenue collections, charges have been framed against certain officers, including the respondent and the respondent is not the only person who has been visited with the charge memo. Further in view of the poor performance of the respondent, he was graded as 'D' .

The Tribunal while relying on a judgment of the Apex Court in Union of India v. J. Ahmed([1])observed that the poor performance of the respondent can be termed as inefficiency in performing his duties and that cannot be construed as mis-conduct.

Admittedly, the charge levelled against the respondent would clearly indicate lack of efficiency and indecisiveness on the part of the applicant, which does not constitute mis-conduct. These deficiencies in the personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings. Therefore, the department mis-construed the poor performance of the respondent as mis-conduct and on that ground the Department cannot initiate disciplinary proceedings. The Tribunal, therefore, while relying on the decision of the Apex Court referred to supra, rightly allowed the O.A. by setting aside the charge memo dated 20.9.2003 and the consequential order dated 4.3.2005 of the Commissioner imposing punishment of stoppage of one increment without cumulative effect.

In the circumstances, we do not find any illegality or irregularity in

the order of the Tribunal warranting interference.

The writ petition fails and the same is accordingly dismissed. No costs.

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T. MEENA KUMARI,J

DATE: 19th June, 2007

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G. CHANDRAIAH,J

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[1] AIR 1979 SC 1022